IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 7446 OF 2005.

Jagannath Krishna Kadam ... Petitioner.

V/s.

Smt. Anandibai T. Pandam ... Respondents.

Shri K.K. Malpathak for the petitioner.

Shri R.D. Mishra for the respondent Nos. 1 & 2.

CORAM : V.C.DAGA, J.

DATED : 7.12.2005.

P.C. :

. Heard learned Counsel for the petitioner.

2. This petition is directed against the judgment and order passed by the Division Bench of the Small Causes Court, Bombay, dated 9.8.2005, in Appeal No.4 of 2001 in RAE &R Suit No.740/2397 of 1988 and order dated 6.4.2005 modified in the appeal.

3. Both the Courts below have concurrently held that defendants were in arrears of rent and as such suit was liable to be decreed.

4. Learned Counsel for the petitioner raised 3 contentions. Firstly, he contended that the suit was not maintainable in view of the declaration of slums and location of the suit premises in slum

area. This submission needs outright rejection. It is not in dispute that the declaration of slum came to be set aside. In view of the subsequent event; whereby declaration of slum came to be set aside, the presntation of suit will not suffer from any vice.

5. The second contention is that the order of appellate authority setting aside the declaration of the slum did not relate to the area in which suit premises is located. No such pleadings are to be found in the written statement. No attempt was made to amend pleadings even during the pendency of the appeal. In this view of the matter, the lower appellate Court was perfectly justified in rejecting application under O.41 R. 27 of the C.P.C. Even otherwise, having perused the document produced, the same does not advance the case of the petitioner on merits.

6. Thirdly, learned Counsel for the petitioner submitted that since the suit property was in the slum area, arrears of rent were not payable. This submission also does not hold any water.

7. In the above view of the matter, petition is without any substance and the same is dismissed in limine with no order as to costs.

8. At this stage, learned Counsel for the petitioner prayed for 6 months time to vacate the suit premises. Learned Counsel for the respondent has no objection for grant of 6 months time to the petitioner to vacate the premises, subject to usual undertaking. Petitioner is accordingly granted 6 months time to vacate the suit premises, subject to filing usual undertaking within 2 weeks from today, undertaking to this Court amongst other must specifically say : (i) that petitioner shall vacate the suit premises after expiry of 6 months from today (ii) that he shall pay agreed rent to the respondent by way of occupation charges every month, on or before 5th day of each month and (iii) that no third party interest shall be created in respect of the suit premises.

9. Needless to mention that failure on the part of the petitioner to file usual undertaking within two weeks, it would be open for the respondent to execute the decree in accordance with law.